

No^t 9/5/84-6 Lab./920.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of Administrator, Municipal Committee, Kharkhoda (Sonepat) :—

BEFORE SHRI B.P. JINDAL PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 251 of 1983

between

SHRI DHANDHU, WORKMAN AND THE MANAGEMENT OF ADMINISTRATOR,
MUNICIPAL COMMITTEE, KHARKHODA (SONEPAT)

Present:—

Shri S.N. Solanki, A.R. for the workman.

Shri B.S. Malik, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Dhandhu and the management of Administrator, Municipal Committee, Kharkhoda (Sonepat), to this court, for adjudication,—*vide* Labour Department Gazette Notification No. 61710—15, dated 23rd November, 1983.

Whether the termination of services of Shri Dhandhu was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed as Sweeper with the respondent since 21st May, 1980 on monthly wages of Rs. 300 and that his services were terminated by the respondent unlawfully on 31st January, 1982 and that the order of termination contravenes the provisions of section 25.F of the Industrial Disputes Act, 1947, because no prior notice or retrenchment compensation was given to him before termination of his services.

3. In the reply filed by the respondent, most of the allegations made in the claim statement have been admitted. It is alleged that the workman had been told verbally that letter has been received from the Government of Haryana that recruitment should be made after getting the names sponsored through the Employment Exchange.

4. On the pleadings of the parties, the following issue was settled for decision on 12th October, 1984.

1. Whether the termination of services of Shri Dhandhu was justified and in order ? If not, to what relief is he entitled ?

5. The management examined one witness MW-1 Shri Bhim Singh, Clerk and the workman appeared as his own witness as WW-1. I have heard their learned Authorised Representatives of the parties. My findings on the issue framed are as below :—

Issue No. 1 :

6. There is no dispute between the parties that the workman was employed in the month of May, 1980. It is also undisputed that his services were terminated on 31st January, 1982 after a lapse of more than one year and eight months. It is not alleged or proved by the respondent that the workman remained absent during this period. So, the workman had under all circumstances actually worked with the respondent for more than 240 days during the last 12 calendar months from the date his services were terminated, and as such the respondent was not justified in terminating his services without complying with the mandatory provisions of section 25.F of the Industrial Disputes Act, 1947. The grotesque ground of termination put forth on behalf of the respondent was that instructions had been received from the Government of Haryana that employees employed without their names being sponsored through Employment Exchange, should not be retained in service. Under the Industrial Disputes Act, 1947, no distinction has been contemplated between the employees employed through Employment Exchange or otherwise. So, there is no difficulty in holding that the order of termination of services of the workman was void *ab initio* and as such not sustainable in the eyes of law.

7. In the light of my foregoing discussion, order of termination of services of the workman is set aside and the workman is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated 3rd January, 1985.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 251/83/162, dated 25th January, 1985

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6 Lab./921—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of Haryana State Minor Irrigation and Tubewell Corporation, Chandigarh (ii) Executive Engineer, Haryana State Minor Irrigation and Tubewell Corporation Division No. 4, Fatehabad :—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 228 of 1983

Between

SHRI GURDEV SINGH, WORKMAN AND THE MANAGEMENT OF (i) HARYANA STATE MINOR IRRIGATION AND TUBEWELL CORPORATION, CHANDIGARH (ii) EXECUTIVE ENGINEER, HARYANA STATE MINOR IRRIGATION TUBE WELL CORPORATION DIVISION NO. 4, FATEHABAD

Present.—

Shri T.C. Gupta, A.R. for the workman.

Shri B.K. Bansal, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Gurdev Singh, and the management of (i) Haryana State Minor Irrigation Tubewell Corporation, Chandigarh (ii) Executive Engineer, Haryana State Minor Irrigation Tubewell Corporation Division No. 4, Fatehabad, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. 59382-87, dated 11th November, 1983 :—

Whether the termination of services of Shri Gurdev Singh is justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. As per the claim statement, claim of the workman is that he was employed in the year, 1979 but his services were terminated by the respondent unlawfully on 8th January, 1983 in gross violation of the provisions of the Industrial Disputes Act, 1947.

3. A detailed reply was filed by the respondent, in which claim of the workman has been controverted. It is alleged that the workman was employed on temporary basis by the field staff of the respondent for a specified work i.e. construction of a canal and that the employment of the workman could be terminated at any time without notice. It is further alleged that the workman was employed in the month of January, 1980 and he worked up to 31st December, 1982 So, it is alleged that the provisions of the Industrial Disputes Act were not contravened while dispensing with the services of the workman.

4. On the pleadings of the parties, the following issue was settled for decision by me on 12th September, 1984 :

1. Whether the termination of services of Shri Gurdev Singh is justified and in order ? If not, to what relief is he entitled ?

5. Both the parties were allowed to adduce their evidence. The management examined Shri B.K. Bansal, Junior Engineer as MW-1. The workman appeared as his own witness as WW-1. I have heard the learned Authorised Representatives of the parties and have gone through the evidence on record. My findings on the issue framed are as below :—

Issue No. 1

6. It is admitted case of the respondent that the workman was employed in the month of January 1980 and he worked as such up to 31st December, 1982. It is not alleged or proved that the service tenure of the workman was not uninterrupted and so the workman had remained unemployed with the respondent for more than 240 days. During the course of adducing evidence, the respondent tried to build up a case different from the one put up in the reply. Shri B.K. Bansal, when appeared as MW-1 stated that the workman remained employed from 1st January, 1980 to 31st December, 1982 and thereafter he remained absent from 1st January, 1983 to June, 1983 and was re-employed in the month of August, 1983 and remained employed up to October, 1983 and that his services were dispensed with after due notice. This is not the case of the respondent in the reply filed by him. So, the respondent can not be allowed to travel beyond its pleadings. So, I find that since the workman had actually worked for more than 240 days with the respondent, the respondent can not have done so without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947, because the workman was not paid any retrenchment compensation as envisaged under the said section. So, the order of termination was *void ab initio* and as such not sustainable in the eyes of law.

7. In the light of my foregoing discussion, the workman is ordered to be reinstated forthwith with continuity of service and with full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated 10th January, 1985.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak

Endorsement No. 228/83/162, dated 25th January, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab./922.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/s. Hindustan Pottery Industries, Industrial Area, Bahadurgarh.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 132 of 82.

Between

SHRI ADALTI GUPTA, WORKMAN AND THE MANAGEMENT OF M/s. HINDUSTAN POTTERY INDUSTRIES, INDUSTRIAL AREA, BAHADURGARH.

Present.—Shri K.D. Mandal, A.R. for the workman.
Shri M.M. Kaushal, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause(c) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Adalti

Gupta, and the management of M/s. Hindustan Pottery Industries, Industrial Area, Bahadurgarh, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. ID/RTK/91/82/32782 dated 9th July, 1982 :—

Whether the termination of service of Shri Adalti Gupta, was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The workman alleged that he was employed with the respondent for the last about 5½ years in the packing department on monthly wages of Rs. 285 and because he was a active unionist, so, management was piqued against him and as such the management unlawfully terminated his services on 15th February, 1982 in flagrant disregard of the provisions of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, most of the allegations have been controverted. Since this reference is being answered on grounds other than merits, so, I need not detail the pleas taken by the management.

4. On the pleadings of the parties, the following issues were framed on 27th April, 1983 :—

1. Whether the enquiry conducted by the mangement is fair and proper ? If so, to what effect ?
2. Whether the workman has remained gainfully employed ? If so, to what effect ?
3. Whether the termination of services of Shri Adalti Gupta was justified and in order ? If not, to what relief is he entitled ?

5. After the management had gone through the gamut of evidence and the case was fixed for evidence of the workman, happily a settlement was arrived at between the parties, where under the management has agreed to pay a sum of Rs 705 to the workman in full and final staisfaction of his claim. In that behalf the statement of the Authorised Representative of the workman Shri K.D. Mandal has been recorded. The learned Authorised Representative of the workman stated that the workman is at present in Assam. If I, force his presence in the Court to receive the amount that would be onerous for the workman, because the amount involved is very paltry. So, the learned Authorised Representatives for the parties agree that the amount of Rs. 705 be remitted to the workman by money order after deducting money order fee. This mode of remittance of money has been accepted by the Authorised Representative of the workman also. The management shall remit the amount by money order and place a photo copy of the money order receipt on the Court file. The address of workman shall be furnished by the learned Authorised Representative of the workman today. In terms of the settlement, now, no dispote survives for adjudication. The reference is answered and returned accordingly. There is no order as to cost.

Dated 10th January, 1985.

B. P. JINDAL,

Presiding Officer,
Labour Court Rohtak.

Endst No. 132/82/163, dated 25th January, 1985.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6 Lab/929.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presidng Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Suraj Mal-Baij Nath Industries (Pvt.) Ltd., Industrial Area, Sonepat.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 95 of 1981

between

SHRI RAM CHANDER, WORKMAN AND THE MANAGEMENT OF M/S SURAJ MAL-BIJ NATH INDUSTRIES (PRIVATE LIMITED), INDUSTRIAL AREA, SONEPAT

Shri S.N. Solanki, A.R. for the workman.

Shri Rajinder Singh, A.R. for the management.

541
AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Ram Chander and the management of M/s Suraj Mal-Baij Nath Industrial (Private Limited), Industrial Area, Sonepat to this Court, for a adjudication,—*vide* Labour Department Gazette Notification No. ID/SPT/77/81/35125, dated 24th July, 1981 :—

Whether the termination of services of Shri Ram Chander was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The workman alleged that he was appointed as Tongsman with the respondent for the last about 2½ years on monthly wages of Rs. 395 and that his services were terminated unlawfully by the management on 23rd February, 1981 and subsequently the respondent issued a letter to the workman on 13th March, 1981 for enquiry and that the charge-sheet was to be issued up to 7th April, 1981 but no enquiry was held against the workman and as such his termination was flagrant disregard of the provisions of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, preliminary objection taken is that the reference is bad in law, because the management never terminated the services of the workman as alleged. In fact the workman absented from duty with effect from 23rd February, 1981 without permission and as such he lost lien on the job. On merits, it is alleged that the workman was placed under suspension on 23rd February, 1981 and subsequently the management agreed to revoke the suspension order and advising the workman to report for duty within 48 hours but the workman failed to do so as such was informed,—*vide* letter dated 13th March, 1981 and that he has lost lien on the job. So, it is alleged that there was no termination of services of the workman.

4. In the replication filed by the workman, he has controverted the various pleas taken by the respondent.

5. On the pleadings of the parties, the following issues were framed on 16th November, 1981 :—

1. Whether the claimant absented himself from duty without prior permission and thus lost his lien on the job ? OPM
2. Whether the termination of services of Shri Ram Chander was justified and in order ? If not, to what relief is he entitled ?

6. Both the parties were allowed to produce their evidence. The management examined MW-1 Shri Om Parkash Gupta, Factory Manager and the workman appeared as his own witness as WW-1.

7. The learned Authorised Representatives of the parties heard. File perused. My findings on the issues framed are as below :

Issue No. 1.

8. The case of the management is that the workman absented with effect from 23rd February, 1981 on which date he was placed under suspension, photo copy of the order is Exhibit MW-1/1. He was placed under suspension pending enquiry. Strangely enough on the same date order of suspension was revoked by the management, photo copy of the letter is Exhibit MW-1/2. The same is dated 23rd/24th February, 1981 and the workman was advised to report for duty within 48 hours. The workman has not admitted the receipt of this letter. The management again issued one letter Exhibit MW-1/4, dated 1st March, 1981 advising the workman to report for duty. The last letter issued by the management is MW-1/5 dated 13th March, 1981. The receipt of this letter is admitted by the workman. *Vide* this letter the workman was informed that his name has been struck off from the rolls of the employees of the respondent and that he can collect his dues from the respondent/company, otherwise the same shall be remitted to him by moneyorder. The question would be as to whether the workman was ever informed by the management about the order revoking suspension and about letter dated 1st March, 1981,—*vide* which he was advised to report for duty. These letters were not sent by registered post. The workman has denied the receipt of the same. Since the workman was put under suspension there was no question of his reporting for duty unless order of suspension revoked. So, in a way there is no categorical and convincing evidence on the file that the workman remained absent from duty with effect from 23rd February, 1981 and as such lost lien on his job. So, this issue is answered against the management.

Issue No. 2.

9. Admittedly no domestic enquiry was held against the workman. Undisputedly the management did not give him any notice or paid any retrenchment compensation to the workman before terminating his service. So, the order of termination was in gross violation of the provisions of the section 25F of the Industrial Disputes Act, 1947 and the same can not be sustained. So, this issue is also answered against the management.

542

10. In the light of my forgoing discussion, finding the order of termination unlawful, the workman is ordered to be reinstated forthwith with continuity of service and with full back wages. The reference is answered and returned accordingly. There is no order as to cost.

The 16th January, 1985.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonepat.

Endst. No. 95/82/170, dated the 25th January, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.
Camp Court, Sonepat.

No. 9/5/84-6 Lab/938. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act, No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/s Grover Enterprises, Narela Road, Kundli, (Sonepat).

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 42 of 82

between

SHRI CHANDESHWAR DASS, WORKMAN AND THE MANAGEMENT OF M/s GROVER ENTERPRISES NARELA ROAD, KUNDLI (SONEPAT).

Shri S.N. Solanki, A.R. for the workman.

None for the management.

AWARD*

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Chandeshwar Dass and the management of M/s Governor Enterprises Narela Road, Kundli (Sonepat), to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. ID/SPT/11/82/6451, dated 9th February, 1982 :

Whether the termination of service of Shri Chandeshwar Dass was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed as Turner with the respondent on monthly wages of Rs. 590 and his services were terminated by the management on 10th August, 1981 in gross violation of the provisions of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, claim of the workman has been controverted. It is alleged that the workman was never retrenched on 3rd August, 1981 and again on 10th August, 1981. The pleas is that he was laid off as there was no work on the lathe and that the workman was ordered to report for duty by 5th January, 1981, which he did not. Again he was directed to report for duty by 9th January, 1981 but again the workman absented because he was gainfully employed somewhere else. In nut shell the case of the respondent is that the services of the workman were never terminated as alleged. The date of employment being February 1973 is also denied.

4. On the pleadings of the parties, the following issue was settled for decision on 20th January, 1983 ;

1. Whether the termination of services of Shri Chandeshwar Dass was justified and in order ? If not, to what relief is he entitled ?

543

5. Subsequently the respondent absented and so *ex parte* proceedings order was passed by me on 18th December, 1984. The workman appeared as his own witness and made a statement completely in corroboration of his demand notice.

6. A perusal of the order sheets will show that earlier also the respondent was proceeded *ex parte* on 23rd March, 1983 but the said order was set aside on 19th April, 1983 on an application filed by the respondent on payment of Rs. 70 as cost.

7. I, see no reason to disbelieve the unrebutted statement made by the workman. Services of the workman were terminated by the respondent after giving a complete go-bye to the provisions of section 25-F of the Industrial Disputes Act, 1947. In any case the workman had already completed more than 240 days of actual work with the respondent and so his services could not have dispensed with without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947, which was not done by the management. So, I order for reinstatement of the workman forthwith with continuity of service and with full back wages. The reference is, answered and returned accordingly. There is no order as to cost.

B. P. JINDAL,

Dated the 16th January, 1985.

Presiding Officer,
Labour Court, Rohtak.

Endst. No. 42/82/179, dated 25th January, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

The 21st February, 1985

No. 9/5/84-6Lab/939.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s Jagdish Weaving Factory, Bahalgarh Road, Sonepat.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 71 of 1982

between

SHRI RAM JANAK SINGH, WORKMAN AND THE MANAGEMENT OF M/s JAGDISH
WEAVING FACTORY, BAHALGARH ROAD, SONEPAT

Present:

Shri Bahadur Yadav, A.R. for the workman.

None for the respondent.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Ram Janak Singh and the management of M/s Jagdish Weaving Factory, Bahalgarh Road, Sonepat, to this Court for adjudication,—*vide* Labour Department Gazette Notification No. I.D./SPT/31/82/19705, dated 27th April, 1982:—

Whether the termination of service of Shri Ram Janak Singh was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent as a Weaver on monthly wages of Rs. 330 for the last about 5½ years but his services were unlawfully terminated by the management on 9th May, 1981 in flagrant disregard of the provisions of the Industrial Disputes Act, 1947.

544

3. Initially the respondent appeared and filed a reply controverting the claim of the petitioner in toto. The pleas projected were that the workman along with others resorted to stay in tool down strike on 29th January, 1981, which was accompanied by violent acts and the strike resorted to by the workman was prohibited by the Government of Haryana on 10th March, 1981 but the workman failed to report for duty along with others.

4. On the pleadings of the parties, the following issues were settled for decision on 25th October, 1982.

1. Whether the reference is bad for reasons stated in additional plea paras 1&2 of the written statement? If so, to what effect?
2. Whether the termination of service of Shri Ram Janak Singh was justified and in order? If not, to what relief is he entitled?

5. After the management had produced his evidence and the case was fixed for evidence of the workman, this reference was dismissed in default for non-prosecution on 9th November, 1984. The workman filed an application for restoration of the same. Notice of the same was given to the management. But none appeared in spite of service. So, *ex parte* proceedings order was passed against the management. Under these circumstances, this reference is before me for disposal in an *ex parte* manner. The workman appeared as WW-1 and made a statement that he was employed by the respondent on 26th June, 1976 as a Weaver and that his services were terminated unlawfully on 9th May, 1981 without any prior notice or payment of any retrenchment compensation. He further stated that he was drawing an a salary of Rs. 330. Statement of the workman remains unrebuted. I, see no reason to disbelieve the same. Otherwise from the evidence adduced by the management, pleas propounded by it in written statement have not been proved. I find that the respondent dispensed with the services of the workman unlawfully without complying with the mandatory provision of 25F. of the Industrial Disputes Act, 1947, because no notice or retrenchment compensation was given to the workman as envisaged in the said section. So, the workman is reinstated forthwith with continuity of service and with full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 17th January, 1985.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonepat.

Endorsement No. 71/82/180, dated 25th January, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonepat.

No. 9/5/84-6Lab./947.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of State Transport Controller, Haryana, Chandigarh. (ii) General Manager, Haryana Roadways, Sirsa.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 33 of 82.

between

SHRI SURAJ BHAN, WORKMAN AND THE MANAGEMENT OF (i) STATE TRANSPORT CONTROLLER HARYANA CHANDIGARH, (ii) GENERAL MANAGER, HARYANA ROADWAYS SIRSA.
Present:—

S.S. Gupta, A.R. for the Workman.
Shri V.K. Kohli, L.A. for the Management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Sura

Bhan and the management of M/s. (i) State Transport Controller, Haryana, Chandigarh (ii) General Manager Haryana Roadways, Sirsa, to this Court, for adjucation, —*vide* Labour Department Gazette Notification No. ID/HSR/93/81/3749, dated 21st January 1982:—

Whether the termination of service of Shri Suraj Bhan was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was working as a clerk with the respondent since 2nd August, 1971 and that his services were terminated by the management unlawfully on 5th March, 1981 on the basis of trumped up charge which have no bearing upon his official duties.

3. In the reply filed by the respondent the claim of the workman has been controverted. It is alleged that order of termination was passed by the State Transport Controller on legal and valid grounds, because the workman was released on probation of good behaviour by the Court, in a criminal case.

4. On the pleadings of the parties, the following issue was framed on 8th December, 1982 :—

1. Whether the termination of service of Shri Suraj Bhan was justified and in order ? If not, to what relief is he entitled ?

5. The management examined Shri Zile Singh, Clerk, Haryana Roadways, Sirsa Depot, MW-2 Shri B.R. Sharma, Assistant, State Transport Controller Office, Chandigarh. The workman appeared as his own witness as WW-1.

6. Heard. My findings on the issue framed are as below :—

Issue No. 1:

7. On behalf of the respondent it was contended that the order of termination passed by the State Transport Controller, Haryana Chandigarh, is legal and valid, because the workman was convicted by the Court of law and his conviction was maintained upto the High Court level. There is no denying the fact that the workman stood trial along with others in a private complaint filed by one Smt. Dayawanti. He was convicted and sentenced by Lower Court under section 506/223 read with section 34 of the Indian Penal Code. On appeal the learned Additional Sessions Judge, Hissar, set aside the order of conviction of sentence under section 506 of Indian Penal Code but maintained the same under section 323 read with section 34 of the said Court. On an appeal to the Hon'ble High Court of Punjab and Haryana, the sentence was converted into an order of probation on good behaviour. Now the question would be as to whether the State Transport Controller, Haryana could terminate the services of the workman on the basis of conviction and subsequent release on probation of the workman of good behaviour. In the order of State Transport Controller, copy of which is Ex. MW-1/1, there is a mention of section 12 of the Probation of Offenders Act. The said section reads as under :—

Removal of disqualification attaching to conviction :—

Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any attaching to a conviction of an offence under such law :

Provided that nothing in this section shall apply to a person, who, after his release under section 4, is subsequently sentenced for the original offence.

A cursory reading of the said section will reveal that no disqualification is attached to a person dealt with under sections 3 & 4 of the said Act. The workman was not guilty of any misconduct during the course of his official duties. So, the State Transport Controller, Haryana, was not justified in passing the order of termination upon conviction and subsequent release on probation of the workman in the private Complaint filed by one Dayawanti against the workman. The workman is an old employee of the respondent who has been in continuous service since 2nd August, 1971. Order of termination was passed on 5th March, 1981, after a lapse of less than 10 years. So, the same contravenes the mandatory provisions of section 25-F. of the Industrial Disputes Act, 1947, and as such the same is not sustainable in the eyes of law. So, this issue is answered in favour of the workman.

4. From the aforesaid discussion, there is no escape from the conclusion that the workman's services were terminated in flagrant disregard of the provisions of the Industrial Disputes, Act, 1947, and as such he is ordered to be reinstated with continuity of service and full back wages. The reference is answered and retuned accordingly. There is no order as to cost.

Dated 23rd January, 1985.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

546

Endst No. 33/83/186, dated 25th January, 1985.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL

Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab./945.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/S Hissar Textile Mills, Hissar :—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 222 of 83.

between

SHRI RAM VRIKSH, WORKMAN AND THE MANAGEMENT OF M/S. HISSSR TEXTILE MILLS, HISSAR.

Shri T.C. Gupta, A.R. for the workman.

Shri N.K. Garg, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 the Governor of Haryana referred the following dispute between the workman Shri Ram Vriksh and the management of M/s. Hissar Textile Mills, Hissar, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. 59017-21, dated 10th November, 1983 :—

Whether the termination of services of Shri Ram Vriksh is justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The workman alleged that he was employed with the respondent for the last 14 years as a Cone Winder on monthly wages of Rs. 550 and that he was issued a charge-sheet on 2nd March, 1983 to which he gave a reply on 3rd March, 1983 and that the Enquiry Officer was appointed on 10th March, 1983, who gave a bias report, on the basis of which his services were terminated in flagrant disregard of the provisions of section 25 F of the Industrial Disputes Act, 1947.

3. A reply was filed by the respondent, controverting the claim of the petitioner in toto.

4. I need not discuss the various pleas taken by the respondent, because this reference is being answered on grounds other than merits.

5. On the pleadings of the parties, the following issues were settled for decision on 14th December, 1984 :—

- (1) Whether the proper demand notice has been raised upon the respondent ? OPA.
- (2) Whether the demand notice is pre-mature on the ground that the workman has not exhausted the procedure of screening committee as per the terms of the settlement ? OPR.
- (3) Whether the respondent mills have since been closed ? If so, to what effect ? OPR.
- (4) Whether a valid and proper enquiry has been held by the respondent before terminating the service of the workman ? OPR.
- (5) Whether the termination of service of Shri Ram Vriksh is justified and in order ? If not, to what relief is he entitled ?

6. Before any evidence could be recorded, happily a settlement was arrived at incorporated in deed of settlement Ex. W-1, whereunder, the workman has fully and finally settled his accounts and so, now, no

dispute survives for adjudication. Statement of the learned Authorised Representative of the workman has been recorded in that behalf. So, this reference is answered and returned accordingly. There is no order as to cost.

Dated 23rd January, 1985.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endst No. 222/83/186, dated 25th January, 1985.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab/948.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Halwasia Free Chikatsalya, Halu Bazar, Bhiwani :—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 101 of 1981 .

between

SHRI SHIV KUMAR MORARKA, WORKMAN AND THE MANAGEMENT OF M/S HALWASIA FREE CHIKATSALYA, HALU BAZAR, BHIWANI

Present :

Shri S.S. Gupta, A. R. for the workman.

Shri B.R. Ghaiye, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Shiv Kumar Morarka and the management of M/s Halwasia Free Chikatsalya, Halu Bazar, Bhiwani, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. ID/HSR/28-79/35804, dated 30th July, 1981 :—

Whether the termination of service of Shri Shiv Kumar Morarka was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. As per the claim statement of the workman that he was employed as a clerk with the respondent for the last about five years on monthly wages of Rs. 325 and that the respondent terminated his services,—*vide* letter, dated 22nd February, 1979 in flagrant disregard of the provisions of the Industrial Disputes Act, 1947, and that no proper enquiry was held before termination of his services.

3. A detailed reply was filed by the respondent controverting the claim of the petitioner. Preliminary projected were that the respondent is not an "Industry" as defined in section 2(J) of the Industrial Disputes Act, 1947 and as such the reference is bad in law and that the workman raised a dispute which was not referred to the Court for decision initially but later on reference was made without giving an opportunity to the management of being heard. It is further alleged that during conciliation proceedings workman was represented by Shri S.S. Gupta and a settlement was arrived at but the workman seemed to be wriggling out of the same. On merits, it is denied that the applicant was drawing a salary of Rs. 325 p. m. It is alleged that his salary was Rs. 225 p.m. and that his work and conduct was most unsatisfactory. It is further averred that conduct of the workman was reprehensible towards his wife and infant daughter and that the wife of the petitioner filed a petition for maintenance before the learned Additional Chief Judicial Magistrate, Bhiwani, which was upheld and that during the course of employment the workman came into contact with female patients and used to misbehave with them,

against which he was given verbal warnings and that applications regarding his misbehaviour with Smt. Kalawati and Shri Mangat Ram were received by the respondent trustees, upon which a meeting of the trustees was called on 14th February, 1979, but the workman did not attend the same and as such after framing proper charges Shri Mahabir Parshad Mandop was appointed as Enquiry Officer but the workman refused to accept the chargesheet issued against him which was sent through Shri Gurmuikh Singh, Peon of the respondent and thereafter the Enquiry Officer called the workman but the refused to participate in the enquiry and as such ex parte enquiry was held against the workman. Findings were given by the Enquiry Officer holding the workman guilty of the charges framed against him and that the workman remained absent from duty without leave from 15th February, 1979 to 21st February, 1979 and as such services of the workman were terminated on 22nd February, 1979. It is further alleged that the workman was given beating on the roadside by certain relatives of the female patient and that the workman was often found under the influence of drugs during duty hours, and that all efforts to reform him d.

4. On these various grounds it is alleged that order of termination was legal and justified.
5. In the rejoinder filed by the workman, he has controverted the various pleas filed by the respondent.
6. On the pleadings of the parties, the following issues were framed on 14th January, 1982 :—
 - (1) whether the respondent is an "industry" as defined in section 2(J) of the Industrial Disputes Act, 1947 ?
 - (2) whether the reference is bad in law as per reasons given in paras 2 & 3 of the written statement ?
 - (3) whether the termination of services of Shri Shiv Kumar Morarka was justified and in order ? If not, to what relief is he entitled ?

7. The management examined in all five witnesses, MW-1 is Shri Bal Mukand, member of the respondent, Shri M.P. Mandoop, MW-2, Enquiry Officer, MW-3 Shri Gurmuikh Singh Peon, MW-4 Shri Chander Sain Gupta and MW-5 Dr. N.K. Soni. The workman examined WW-1 Shri Purshotam Dass and WW-2 Shri Kishori Lal and himself appeared as WW-3.

8. I have heard the learned authorised representatives of the parties and have gone through the evidence on record. My findings on the issues framed are as below :—

Issue No. 3—

9. The learned authorised representative of the respondent Shri B. R. Ghaiye tried to justify the order of termination (which according to him is an order of discharge) on the ground that since the conduct of the workman *qua* the female patients was unbecoming and furthermore he was addicted to drugs and as such the management was justified in passing an order of discharge, though the management held an enquiry into the complaints received against the workman. In support of his contention he made a reference to the statement of MW-1 Shri Bal Mukand, MW-2 Shri M. P. Mandoop, who held the enquiry, MW-3 Shri Shri Gurmuikh Singh, who went to serve the discharge notice upon the workman and MW-4 Shri Chander Sain one of the aggrieved patients and MW-5 Dr. N. K. Soni of the dispensary. He tried to seek support from the observations made in 1960 I LLJ, 9 between Assam Oil Company Ltd. and its workmen, 1970 (20) Indian Factories and Labour Reports 234 between M/s. Hindustan Steel Ltd. Rourkela and A.K. Rai and others, 1931 Vol. 42 Indian Factories and Labour Reports 372 between India Tourism Development Corporation and Presiding Officer and others and 1972 (I) Supreme Court cases 814 between Air India Corporation Bombay *versus* V. A. Rebellow and another. In all these authorities workmen were holding position of trust and confidence in their company or concern and in that situation the Courts held that retention of the workman in employment would be inexpedient and against the interest of the concern. In my opinion, the law laid down in the authorities can have no application to the facts of the present case. The present applicant was simply a clerk employed by the respondent for issuing chits/slips to the patients coming to the dispensary and summary termination as done by the respondent was not justified. The learned authorised representative of the workman contended that the alleged enquiry conducted on complaints made by the patients is an after-thought, because had the domestic enquiry being held by the respondent, there is no question that the same would not find place in the termination order, copy of which is Exhibit M-7. There is no mention of these written complaints in the chargesheet Exhibit M-6 framed against the workman, photo copies of the complaints are Exhibit M-1 to Exhibit M-5. One of these complaints is by a female patient Smt. Kalawati Devi. She has not alleged in the complaint that the workman had indulged in indecent behaviour with her. Her grouse was that the workman was not prepared to issue a chit to her as she was not having coins. Further more in the charge-sheet Exhibit M-6 there is no mention that the behaviour of the workman with the female patients coming to the dispensary was unbecoming. The word mention is "VAYAKTION" in the charge-sheet. In the reply filed by the respondent to the claim statement many other allegations have been levelled against the workman regarding his being a drug addict and his having been beaten by relatives of the girls molested by him. But these allegations do not find place in the chargesheet issued to the workman. Though the enquiry held against the workman was admitted to be not legal and proper by the learned authorised representative of the respondent during the course of arguments.

10. The case of the workman is that he was made victim of political vendetta by the respondent whose trustees had affiliation with Jan Sangh and he was active worker of Congress(I) and so the management wanted to ease him out when he refused to change his party affiliation at their biddings. Such a plea has not been taken by the workman in the claim statement. So, I propose to ignore the same which was sought to be proved while adducing evidence, because the workman had examined two witnesses WW-1 Shri Purshotam Dass, WW-2 Shri Kishori Lal. Furthermore these witnesses have vouched for good conduct of the workman *qua* the patients coming to the dispensary for treatment. In the order of termination Exhibit M-9 there is no mention that any domestic enquiry was held against the workman. The same has been passed simply on the ground that the workman remained absent without leave from 15th February, 1979 to 21st February, 1979 and secondly that his behaviour with the patients coming to the dispensary for treatment was unbecoming and condemnable. So, the learned Authorised Representative of the workman was justified in arguing that the alleged complaints Exhibit M-1 to Exhibit M-5 and the chargesheet Exhibit M-6, enquiry report Exhibit M-7 were connected later on to give a semblance of legality to the order of termination passed against the workman.

11. In the light of my foregoing discussions, I find that since the workman was not holding any position of trust or confidence in the respondent dispensary, the respondent was not justified in terminating the services without holding a proper domestic enquiry into the alleged complaints made against him by the patients, though the respondent tried to hold a ritualistic enquiry to clothe the order of termination with legality.

12. Admittedly while passing the order of termination or discharge as the case may be, the respondent did not comply with the provisions of section 25-F of the Industrial Disputes Act, 1947, because the workman had actually worked for more than 240 days with the respondent and so the said order of termination can not be sustained being void *ab initio* having been passed in flagrant disregard of the mandatory provisions of section 25-F. So, the same is set aside and as such this issue is answered in favour of the workman.

Issue No. 2 :

13. There is an objection by the respondent that initially Government of Haryana refused to make a reference to the Labour Court when the dispute was raised by the workman but later on for reasons best known to it the Government of Haryana relented to choose to make a reference on second thoughts but without giving the respondent an opportunity of being heard and as such the reference is bad in law. In support of this contention he has cited 1983 Lab. I.C. 233 M/s Escorts Ltd., Faridabad *versus* Industrial Tribunal, Haryana, Faridabad and others. The observations made in this authority to some extent succour the contention put forth on behalf of the respondent but the learned Authorised Representative of the workman was successful in repelling the same by arguing that there is no evidence on record that the Government initially refused to make the reference to the Labour Court and later on made the same on second thought without prior notice to the management. The management was aware of the plea taken by it and the specific issue was framed but the management did not choose to summon the relevant records from the Labour Department to prove the same. Shri S.S. Gupta, learned Authorised Representative of the workman also cited 1981 Vol. II LN 270. Observations made in this authority are to this effect that neither the employer nor the workman can claim any right to be heard before the order of reference is made either initially or on second thoughts. In the Punjab authority cited on behalf of the respondent their Lordships did not hold categorically that in case the management was not heard by the Labour Department before making the reference to the Labour Court on second thoughts the reference shall be bad in law. Their Lordships held that rules of natural justice require that in such eventuality the Labour Department should give an opportunity to the respondent of being heard. So, this issue is answered in favour of the workman.

Issue No. 1 :

14. This issue was not pressed on behalf of the management. Otherwise the law is settled that institutions like the respondent are covered within the definition of "industry" as given in section 2(J) of the Industrial Disputes Act, 1947.

15. In the light of my foregoing discussion, while setting aside the order of termination, the workman is ordered to be reinstated with continuity of service and 25 per cent back wages. Full back wages have not been awarded to the workman because the respondent is a charitable dispensary manned by a single doctor and one or two dispensors and it can be well presumed that the financial position of the respondent may not be very flattering. Furthermore the conduct of the workman was under grave doubts during the course of employment and he is realised to acquit himself admirably on his reinstatement. The reference is answered and returited accordingly. There is no order as to cost.

B. P. JINDAL,

Dated the 23rd January, 1985.

Presiding Officer,
Labour Court, Rohtak.

Endst. No. 101/81/187, dated the 25th January, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.